

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DANIEL S. O'TOOLE)
STACIA L. O'TOOLE)
) Cause # 1:20-cv-1893
Plaintiffs)
)
v.)
)
ROACHE & ASSOCIATES)
)
Defendants)

PLAINTIFFS COMPLAINT FOR DAMAGES

Comes now Plaintiffs, by counsel, and for their Complaint for Damages against Defendants, Roache & Associates, and in support of same states and alleges as follows:

1. This action is authorized and brought pursuant to *15 U.S.C.A. 1692, Title VIII of the Consumer Protection Act*, known as the *Fair Debt Collection Practices Act (FDCPA)*, to address a violation of Plaintiffs rights thereof;
2. Plaintiffs are adult United States citizens residing at 13867 Smokey Ridge Drive, Carmel, Indiana;

3. Plaintiffs, each of them, are debtors within the meaning of that term as contemplated by the *Fair Debt Collection Practices Act (FDCPA)*;
4. Defendant, Roache & Associates is a law firm and a third-party debt collector covered by the *Fair Debt Collection Practices Act. Heintz v. Jenkins*, 514 U.S. 291 (1995);
5. On or about March 27, 2019, Defendant sent a letter attempting to collect an alleged consumer debt from Plaintiffs on behalf of Smokey Ridge Homeowners Association, Inc. A copy of that letter is attached hereto as Exhibit A;
6. The letter gave the debtors notice that they had 30 days to dispute the validity of the debt attempting to be collected;
7. Defendants sent a subsequent letter on or about April 23, 2019, a date which fell within the 30 days ambit provided for in the first letter, demanding additional amounts, and setting a due date of May 3, 2019. There was no reference to the dispute notification in the letter of March 27, 2019 and no new advisement pursuant to the *FDCPA* as to the new higher amount now demanded. A copy of that letter is attached hereto as Exhibit B;
8. The letter of April 23, 2019 is violative of *15 U.S.C.A. 1692 (a)* for

confusing and conflicting information as to the consumer's rights under the Act which the debt collector is required to give;

9. That such conflicting information in the letter is a violation of the *Fair Debt Collection Practices Act* by attempting to defeat the statute's purpose by making the required disclosures in a form or within a context in which they are unlikely to be understood by the unsophisticated debtors whoa re the particular objects of the statute's solicitude. *Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997);

10. Defendant then filed a Small Claims suit in the Hamilton Superior Court Four on July 16, 2019; cause # 29D04-1907-SC-6550;

11. As a result of the unlawful collection practices of the Defendant, Roache & Associates, Plaintiff's rights under 15 U.S.C.A. 1692, have been violated and Plaintiffs have been damages thereby;

12. Wherefore, Plaintiffs pray the Honorable Court to award damages to Plaintiffs as against Defendant, pursuant to the applicable provisions of the FDCPA, for reasonable attorney fees, and for all other relief just and proper in the premises.

Respectfully submitted,

/s/James R. Recker

James R. Recker

22233-49

Attorney for Plaintiffs, Daniel & Stacia O'Toole